

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLMS MANAGEMENT SERVICES  
LIMITED PARTNERSHIP,  
ROUNDHILL I, L.P.,

**Plaintiffs,**

AMWINS BROKERAGE OF  
GEORGIA, LLC; AMRISC, LLC;  
C.J.W. & ACCOCIATES, INC.; and  
CERTAIN UNDERWRITERS AT  
LLOYD'S,

## Defendants.

CASE NO. 3:19-cv-05785-RBL

ORDER ON MOTION FOR  
CERTIFICATION PURSUANT TO 28  
U.S.C. § 1292(B)

DKT. # 43

THIS MATTER is before the Court on Plaintiffs' Motion for Certification Pursuant to 28 U.S.C. § 1292(b). Dkt. # 43. Plaintiffs wish to appeal the Court's December 26, 2019 Order granting Defendants' Motion to Compel Arbitration and Stay Proceedings on the basis that RCW 48.18.200, which bars mandatory arbitration clauses in insurance contracts, is preempted by the Convention on the Recognition of Foreign Arbitral Awards, Art. II, Sec. 3, which requires U.S. Courts to enforce arbitration clauses upon request. Order, Dkt. # 41.

Certification of a non-appealable order under 28 U.S.C. § 1292(b) is appropriate only when the following three requirements are met: (1) the order involves a controlling question of

1 law; (2) as to which there is a substantial ground for a difference of opinion; and (3) an  
2 immediate appeal from the order could materially advance the ultimate termination of the  
3 litigation. *See* 28 U.S. C. §1292(b); *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1025-26  
4 (9th Cir. 1982). The Ninth Circuit instructs that certification under § 1292(b) “is to be applied  
5 sparingly and only in exceptional cases.” *United States v. Woodbury*, 263 F.2d 784, 788 n.11  
6 (9th Cir. 1959). Exceptional cases are those in which allowing interlocutory appeal would avoid  
7 protracted and expensive litigation. *In re Cement Antitrust Litigation*, 673 F.2d at 1026.

8 This is such a case. First, the issue raised for appeal is controlling because it will  
9 determine whether this dispute will be resolved via arbitration in New York or in these  
10 proceedings. Second, as the Court observed in its Order, there is considerable disagreement  
11 between courts around the country about whether and why the Convention preempts state laws  
12 like RCW 48.18.200. *See* Dkt. # 41 at 5-7. The Ninth Circuit has not weighed in on the question.  
13 Consequently, although the Court is confident in its reasoning, this is not a run-of-the-mill  
14 arbitration scenario; rather, the issue raised for appeal is complex and there is clearly room for  
15 disagreement.

16 Finally, although granting Plaintiffs’ Motion will mean that this case temporarily remains  
17 in the federal judiciary, it will ultimately lessen the risk of the parties spending unnecessary time  
18 litigating. Allowing Plaintiffs to appeal now rather than after the conclusion of arbitration and  
19 formal dismissal of this case will eliminate the danger of going through an entire unnecessary  
20 arbitration process. On the other hand, denying Plaintiffs’ Motion would guarantee that  
21 arbitration takes place but may also result in the same appeal occurring on a later date. It is  
22 therefore in the interest of efficiency to allow Plaintiffs to go forward with their interlocutory  
23 appeal.

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1 For the above reasons, Plaintiffs' Motion for Certification Pursuant to 28 U.S.C.  
2 § 1292(b) is GRANTED. This case shall remain STAYED until the culmination of the appeal  
3 process.

## 4 IT IS SO ORDERED.

6 Dated this 11<sup>th</sup> day of February, 2020.

Ronald B. Lightner

Ronald B. Leighton  
United States District Judge